

REMARKS

Claim 1-27 are pending in this application. Claims 2-4, 6, 7, 13, 18 and 20 have been cancelled. Claims 1, 8-9, 15-17 and 23 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,172,441 to Hartwig et al. Claims 1-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Design Patent No. D483,994 to Boyle in view of U.S. Patent 3,315,946 to Nissman. Claims 1-7, 9-13, 19-20, 22-25 and 27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,332,706 to Hall in view of U.S. Patent No. 2,702,571 to Murray. The present response is an earnest effort to place all claims in proper form for immediate allowance. Applicants respectfully traverse these rejections and requests reconsideration of the claims as amended.

Issues Under 35 U.S.C. § 102

Claims 1, 8-9, 15-17 and 23 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,172,441 to Hartwig. Applicants respectfully traverse this rejection as Hartwig does not disclose each and every element of amended independent claims 1, 15 and 23.

In particular, claims 1 and 15 have been amended to include the limitation that "the body having an interior cross-sectional area that enlarges from a first value to a second maximum value and then decreases to a third value progressing between the first and second end to enhance blending action in the jar." Claims 23 has been amended to include that the "body with upper and lower ends and having an interior cross-sectional area that enlarges from a first value to a second maximum value and then reduces to a third value spaced between the upper and lower

ends." This amendment to claims 1, 15 and 23 merely clarify the prior limitations in these claims regarding the cross-sectional area; and thus do not require any further search by the Examiner.

Hartwig does not disclose these three cross-sectional values of the claims. The cross-sectional area of Hartwig is always decreasing from base to neck 4, contrary to the requirements of the claims. Hartwig discloses a jar with a body that has a base and an upper end or throat 4 that provides a cylindrical projection that is narrower than the body of the jar. The exterior profile of the jar narrows in a general elongated curve from the first value at the base to a second value adjacent the upper throat 4, as viewed in a vertical cross-section side view as depicted in Figure 1. There is not a reduced third value of the cross-section of the Hartwig jar. The cross-sectional area does not enlarge to a second maximum value and then decrease to a third value as required by the three independent claims.

Even the cross-sectional view of Figure 1 that depicts the ribs does not depict the limitation that the interior cross-sectional area increase to a maximum and then decrease in value. The Hartwig jar has three inwardly projecting ribs, spaced equally around the jar. The wall of the jar opposite each rib expands or enlarges continuously from the upper throat 4 to the base. Thus, even though the depth of the rib may increase, the opposite side is also increasing, such that cross-sectional area does not decrease anywhere along the rib from top to bottom. Instead, Hartwig's maximum interior cross-sectional area is at the lower end where the jar connects to the base. Hartwig cannot be said to disclose the limitation that the interior cross-sectional area increases to a maximum value and then decreases to some reduced value between the first and second ends. Therefore, these rejections must be withdrawn.

Claims 8-9 and 16-17 depend from the aforementioned independent claims. Therefore, these rejections should also be withdrawn as Hartwig does not disclose each and every element of claims 1, 15 and 23.

Issues Under 35 U.S.C. § 103

Claims 1-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Design Patent No. D483,994 to Boyle in view of U.S. Patent No. 3,315,946 to Nissman.

The current application identified above and the citation U.S. Design Patent No. D483,994 to Boyle were, at the time this application was made, owned by the same entity: Maytag Corporation, 403 West 4th Street North, Newton, Iowa. Applicants submit the following evidence of common ownership:

U.S. Patent No. D483,994 was, at the time the invention was made, owned by, or subject to an obligation of assignment to Maytag Corporation as recorded at reel/frame: 013930/0982.

U.S. Patent Application Serial No. 10/729,713 was at the time the invention was made, owned by, or subject to an obligation of assignment to Maytag Corporation as recorded at reel/frame: 015023/0689.

In view of the common ownership of the prior art citation and the invention, Applicants respectfully request that the rejections based upon Boyle be withdrawn.

Claims 1-7, 9-13, 19-20, 22-25 and 27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,332,706 to Hall in view of U.S. Patent No. 2,702,571 to Murray. The Federal Circuit has explained, "under § 103, teachings of references can be combined only if there is some suggestion or incentive to do so ... The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification." In re Fritch, 972 F.2d 1260, 1266 (Fed. Cir. 1992). "It is wrong to use the patent-in-suit as a guide through the maze of

prior art references, combining the right references in the right way so as to achieve the results of the claims in suit." Orthopedic Equipment Co. v. United States, 702 F.2d 1005 (Fed. Cir. 1983).

The mere fact that the references can be combined or modified does not render the resulting combinations obvious unless the prior art also suggests the desirability of the combination. See MPEP § 2143.01. Hall discloses a method of aerating wine. The very purpose of the invention is to have a separate stirring plate and a stir bar that can be rotated within a container by a magnetic field without a shaft traversing the bottom of the container. (See column 2, lines 40-50). The stir bar is specific to the device and cannot be modified to include knives or blades as they would not fulfill the purpose of stirring the liquid without altering the composition of the liquid and hence the flavor and aroma. (column 1, lines 14-15). The inclusion of a knife or blade specifically designed to change the composition/texture of a material within a blender jar would have been a direct opposition to the stated purpose of the Hall invention. Hence there is no motivation to combine Hall with Murray.

Applicants respectfully request that the Examiner withdraw the rejections based upon the combination of Hall and Murray as there is no motivation to combine the two prior art references. Therefore, these rejections of claims 1-7, 9-13, 19-20, 22-25 and 27 should be withdrawn.

Independent claims 1, 10 and 19 have been amended to include the limitation that the body includes a handle. The handle limitation was originally found in claims 7, 13 and 20 (now cancelled), and thus does not raise any new issues or require a new search. This limitation is not disclosed by Hall. Further, there would be no motivation to modify Hall as the containers disclosed therein do not include a handle because each of the containers is designed to be grasped about the neck. As each and every limitation of the above independent claims is not disclosed by

Hall and there is no motivation to combine Hall with any other reference to include a handle, Applicant respectfully requests that the rejections be withdrawn.

Applicant believes that independent claims 1, 10, 15, 19 and 23 are now in proper form for allowance. Further, as the Examiner has already had the search for the limitation of a handle, Applicant does not believe the inclusion of this limitation will require any further search on the part of the Examiner.

Conclusion

Since the amendment to the claims raise no new issues and do not require any further search, Applicant respectfully requests that this amendment be entered and that a Notice of Allowance be issued.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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